

HOUSE BILL 235

D5

11r0841

By: Delegates Pena–Melnyk, A. Kelly, Alston, Anderson, Barkley, Barnes, Barve, Beidle, Bobo, Carr, Clippinger, Cullison, Dumais, Feldman, Frick, Frush, Gaines, Gilchrist, Gutierrez, Guzzone, Hammen, Healey, Hixson, Hubbard, Huckler, Ivey, Kaiser, Kramer, Lafferty, Lee, Love, Luedtke, McIntosh, A. Miller, Mitchell, Mizeur, Morhaim, Murphy, Nathan–Pulliam, Niemann, Oaks, Reznik, B. Robinson, S. Robinson, Rosenberg, Ross, Simmons, Summers, Tarrant, F. Turner, V. Turner, Valderrama, Vallario, Waldstreicher, Washington, and Zucker

Introduced and read first time: January 28, 2011

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2011

CHAPTER _____

1 AN ACT concerning

2 **Human Relations – Sexual Orientation and Gender Identity –**
3 **Antidiscrimination**

4 FOR the purpose of prohibiting discrimination based on gender identity with regard to
5 housing and employment; prohibiting discrimination based on gender identity
6 by certain licensed or regulated persons; ~~prohibiting discrimination based on~~
7 ~~sexual orientation or gender identity with regard to the leasing of property for~~
8 ~~commercial usage or in the provision of certain services or facilities;~~ altering a
9 certain exception for employers that relates to standards concerning dress and
10 grooming; providing that certain provisions of law relating to discrimination in
11 employment do not apply to certain religious entities with respect to the
12 employment of individuals of a particular gender identity to perform certain
13 work; providing that an employer is immune from certain liability for certain
14 acts to verify the gender identity of any employee or applicant in response to a
15 certain charge; making certain remedies and procedures regarding
16 discrimination applicable to discrimination based on sexual orientation and
17 gender identity; requiring certain State personnel actions to be made without
18 regard to gender identity or sexual orientation; defining the term “gender

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 identity”; making certain conforming changes; and generally relating to
2 discrimination based on sexual orientation and gender identity.

3 BY renumbering

4 Article – State Government
5 Section 20–101(e) and (f), respectively
6 to be Section 20–101(f) and (g), respectively
7 Annotated Code of Maryland
8 (2009 Replacement Volume and 2010 Supplement)

9 BY adding to

10 Article – State Government
11 Section 20–101(e)
12 Annotated Code of Maryland
13 (2009 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – State Government
16 Section 20–401, 20–402, ~~20–501~~, 20–602, 20–603, 20–604(2), 20–605(a)(2),
17 20–606(a) through (e), 20–608, 20–702(a), 20–704(a)(2), 20–705,
18 20–707(b) and (c), and 20–1103(b)
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2010 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – State Personnel and Pensions
23 Section 2–302
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2010 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That Section(s) 20–101(e) and (f), respectively, of Article – State
28 Government of the Annotated Code of Maryland be renumbered to be Section(s)
29 20–101(f) and (g), respectively.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
31 read as follows:

32 **Article – State Government**

33 20–101.

34 **(E) “GENDER IDENTITY” MEANS A GENDER-RELATED IDENTITY,**
35 **~~APPEARANCE, EXPRESSION, OR BEHAVIOR OR APPEARANCE~~ OF AN INDIVIDUAL**
36 **REGARDLESS OF THE INDIVIDUAL’S ASSIGNED SEX AT BIRTH.**

37 20–401.

1 This subtitle does not prohibit:

2 (1) any person that is licensed or regulated by a unit in the Department
3 of Labor, Licensing, and Regulation from refusing, withholding from, or denying
4 accommodations, advantages, facilities, privileges, sales, or services to any person for
5 failure to conform to the usual and regular requirements, standards, and regulations
6 of the licensed or regulated person, provided that the denial is not based on
7 discrimination on the grounds of race, sex, color, creed, national origin, marital status,
8 sexual orientation, age, ~~GENDER IDENTITY~~, or disability; OR

9 (2) ANY PERSON THAT IS LICENSED OR REGULATED BY THE
10 COMMISSIONER OF FINANCIAL REGULATION FROM REFUSING, WITHHOLDING
11 FROM, OR DENYING ADVANTAGES, PRIVILEGES, SALES, OR SERVICES TO ANY
12 PERSON FOR FAILURE TO CONFORM TO THE USUAL AND REGULAR
13 REQUIREMENTS, STANDARDS, AND REGULATIONS OF THE LICENSED OR
14 REGULATED PERSON, PROVIDED THAT THE DENIAL IS NOT BASED ON
15 DISCRIMINATION ON THE GROUNDS OF GENDER IDENTITY.

16 20-402.

17 (A) A person that is licensed or regulated by a unit in the Department of
18 Labor, Licensing, and Regulation listed in § 2-108 of the Business Regulation Article
19 may not refuse, withhold from, or deny any person any of the accommodations,
20 advantages, facilities, privileges, sales, or services of the licensed or regulated person
21 or discriminate against any person because of the person's race, sex, creed, color,
22 national origin, marital status, sexual orientation, age, or disability.

23 (B) A PERSON THAT IS LICENSED OR REGULATED BY THE
24 COMMISSIONER OF FINANCIAL REGULATION MAY NOT REFUSE, WITHHOLD
25 FROM, OR DENY ANY PERSON ANY OF THE ADVANTAGES, PRIVILEGES, SALES, OR
26 SERVICES OF THE LICENSED OR REGULATED PERSON OR DISCRIMINATE
27 AGAINST ANY PERSON BECAUSE OF THE PERSON'S GENDER IDENTITY.

28 ~~20-501.~~

29 ~~An owner or operator of commercial property, an agent or employee of the owner~~
30 ~~or operator of commercial property, or a person that is licensed or regulated by the~~
31 ~~State may not discriminate against an individual in the terms, conditions, or~~
32 ~~privileges of the leasing of property for commercial use, or in the provision of services~~
33 ~~or facilities in connection with the leasing of property for commercial use, because of~~
34 ~~the individual's race, color, religion, sex, age, disability, marital status, SEXUAL~~
35 ~~ORIENTATION, GENDER IDENTITY, or national origin.~~

36 20-602.

1 It is the policy of the State, in the exercise of its police power for the protection
2 of the public safety, public health, and general welfare, for the maintenance of
3 business and good government, and for the promotion of the State's trade, commerce,
4 and manufacturers:

5 (1) to assure all persons equal opportunity in receiving employment
6 and in all labor management–union relations, regardless of race, color, religion,
7 ancestry or national origin, sex, age, marital status, sexual orientation, **GENDER**
8 **IDENTITY**, or disability unrelated in nature and extent so as to reasonably preclude
9 the performance of the employment; and

10 (2) to that end, to prohibit discrimination in employment by any
11 person.

12 20–603.

13 This subtitle does not require:

14 (1) an employer, employment agency, labor organization, or joint
15 labor–management committee subject to this subtitle to grant preferential treatment
16 to any individual or group on the basis of the race, color, religion, sex, age, national
17 origin, **GENDER IDENTITY**, sexual orientation, or disability of the individual or group
18 because an imbalance may exist with respect to the total number or percentage of
19 individuals of any race, color, religion, sex, age, national origin, **GENDER IDENTITY**,
20 or sexual orientation or individuals with disabilities employed by the employer,
21 referred or classified for employment by the employment agency or labor organization,
22 admitted to membership or classified by the labor organization, or admitted to, or
23 employed in, any apprenticeship or other training program, compared to the total
24 number or percentage of individuals of that race, color, religion, sex, age, national
25 origin, **GENDER IDENTITY**, or sexual orientation or individuals with disabilities in the
26 State or any community, section, or other area, or in the available work force in the
27 State or any community, section, or other area; or

28 (2) an employer to reasonably accommodate an employee's religion or
29 disability if the accommodation would cause undue hardship on the conduct of the
30 employer's business.

31 20–604.

32 This subtitle does not apply to:

33 (2) a religious corporation, association, educational institution, or
34 society with respect to the employment of individuals of a particular religion, [or]
35 sexual orientation, **OR GENDER IDENTITY** to perform work connected with the
36 activities of the religious entity.

1 20-605.

2 (a) Notwithstanding any other provision of this subtitle, this subtitle does
3 not prohibit:

4 (2) an employer from establishing [standards concerning an
5 employee's dress and grooming, if the standards are directly related to the nature of
6 the employment of the employee] **AND REQUIRING AN EMPLOYEE TO ADHERE TO
7 REASONABLE WORKPLACE APPEARANCE, GROOMING, AND DRESS STANDARDS
8 THAT ARE DIRECTLY RELATED TO THE NATURE OF THE EMPLOYMENT OF THE
9 EMPLOYEE AND THAT ARE NOT PRECLUDED BY ANY PROVISION OF STATE OR
10 FEDERAL LAW, AS LONG AS THE EMPLOYER ALLOWS ANY EMPLOYEE TO APPEAR,
11 GROOM, AND DRESS CONSISTENT WITH THE EMPLOYEE'S GENDER IDENTITY;**

12 20-606.

13 (a) An employer may not:

14 (1) fail or refuse to hire, discharge, or otherwise discriminate against
15 any individual with respect to the individual's compensation, terms, conditions, or
16 privileges of employment because of:

17 (i) the individual's race, color, religion, sex, age, national origin,
18 marital status, sexual orientation, **GENDER IDENTITY**, genetic information, or
19 disability unrelated in nature and extent so as to reasonably preclude the performance
20 of the employment; or

21 (ii) the individual's refusal to submit to a genetic test or make
22 available the results of a genetic test;

23 (2) limit, segregate, or classify its employees or applicants for
24 employment in any way that would deprive or tend to deprive any individual of
25 employment opportunities or otherwise adversely affect the individual's status as an
26 employee because of:

27 (i) the individual's race, color, religion, sex, age, national origin,
28 marital status, sexual orientation, **GENDER IDENTITY**, genetic information, or
29 disability unrelated in nature and extent so as to reasonably preclude the performance
30 of the employment; or

31 (ii) the individual's refusal to submit to a genetic test or make
32 available the results of a genetic test;

33 (3) request or require genetic tests or genetic information as a
34 condition of hiring or determining benefits; or

1 (4) fail or refuse to make a reasonable accommodation for the known
2 disability of an otherwise qualified employee.

3 (b) An employment agency may not:

4 (1) fail or refuse to refer for employment or otherwise discriminate
5 against any individual because of the individual's race, color, religion, sex, age,
6 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability
7 unrelated in nature and extent so as to reasonably preclude the performance of the
8 employment; or

9 (2) classify or refer for employment any individual on the basis of the
10 individual's race, color, religion, sex, age, national origin, marital status, sexual
11 orientation, **GENDER IDENTITY**, or disability unrelated in nature and extent so as to
12 reasonably preclude the performance of the employment.

13 (c) A labor organization may not:

14 (1) exclude or expel from its membership, or otherwise discriminate
15 against, any individual because of the individual's race, color, religion, sex, age,
16 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability
17 unrelated in nature and extent so as to reasonably preclude the performance of the
18 employment;

19 (2) limit, segregate, or classify its membership, or classify or fail or
20 refuse to refer for employment any individual, in any way that would deprive or tend
21 to deprive the individual of employment opportunities, limit the individual's
22 employment opportunities, or otherwise adversely affect the individual's status as an
23 employee or as an applicant for employment because of the individual's race, color,
24 religion, sex, age, national origin, marital status, sexual orientation, **GENDER**
25 **IDENTITY**, or disability unrelated in nature and extent so as to reasonably preclude
26 the performance of the employment; or

27 (3) cause or attempt to cause an employer to discriminate against an
28 individual in violation of this section.

29 (d) An employer, labor organization, or joint labor-management committee
30 controlling apprenticeship or other training or retraining programs, including
31 on-the-job training programs, may not discriminate against any individual in
32 admission to, or employment in, any program established to provide apprenticeship or
33 other training or retraining because of the individual's race, color, religion, sex, age,
34 national origin, marital status, sexual orientation, **GENDER IDENTITY**, or disability
35 unrelated in nature and extent so as to reasonably preclude the performance of the
36 employment.

1 (e) (1) Except as provided in paragraph (2) of this subsection, an
2 employer, labor organization, or employment agency may not print or cause to be
3 printed or published any notice or advertisement relating to employment by the
4 employer, membership in or any classification or referral for employment by the labor
5 organization, or any classification or referral for employment by the employment
6 agency that indicates any preference, limitation, specification, or discrimination based
7 on race, color, religion, sex, age, national origin, marital status, sexual orientation,
8 **GENDER IDENTITY**, or disability.

9 (2) A notice or advertisement may indicate a preference, limitation,
10 specification, or discrimination based on religion, sex, age, national origin, marital
11 status, or disability if religion, sex, age, national origin, marital status, or disability is
12 a bona fide occupational qualification for employment.

13 20-608.

14 An employer shall be immune from liability under this title or under the
15 common law arising out of reasonable acts taken by the employer to verify the sexual
16 orientation **OR GENDER IDENTITY** of any employee or applicant in response to a
17 charge filed against the employer on the basis of sexual orientation **OR GENDER**
18 **IDENTITY**.

19 20-702.

20 (a) It is the policy of the State:

21 (1) to provide for fair housing throughout the State to all, regardless of
22 race, color, religion, sex, familial status, national origin, marital status, sexual
23 orientation, **GENDER IDENTITY**, or disability; and

24 (2) to that end, to prohibit discriminatory practices with respect to
25 residential housing by any person, in order to protect and [insure] **ENSURE** the peace,
26 health, safety, prosperity, and general welfare of all.

27 20-704.

28 (a) This subtitle does not apply to:

29 (2) with respect to discrimination on the basis of sex, sexual
30 orientation, **GENDER IDENTITY**, or marital status:

31 (i) the rental of rooms in any dwelling, if the owner maintains
32 the dwelling as the owner's principal residence; or

1 (ii) the rental of any apartment in a dwelling that contains not
2 more than five rental units, if the owner maintains the dwelling as the owner's
3 principal residence.

4 20-705.

5 Except as provided in §§ 20-703 and 20-704 of this subtitle, a person may not:

6 (1) refuse to sell or rent after the making of a bona fide offer, refuse to
7 negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to
8 any person because of race, color, religion, sex, disability, marital status, familial
9 status, sexual orientation, **GENDER IDENTITY**, or national origin;

10 (2) discriminate against any person in the terms, conditions, or
11 privileges of the sale or rental of a dwelling, or in the provision of services or facilities
12 in connection with the sale or rental of a dwelling, because of race, color, religion, sex,
13 disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or
14 national origin;

15 (3) make, print, or publish, or cause to be made, printed, or published,
16 any notice, statement, or advertisement with respect to the sale or rental of a dwelling
17 that indicates any preference, limitation, or discrimination based on race, color,
18 religion, sex, disability, marital status, familial status, sexual orientation, **GENDER**
19 **IDENTITY**, or national origin, or an intention to make any preference, limitation, or
20 discrimination;

21 (4) represent to any person, because of race, color, religion, sex,
22 disability, marital status, familial status, sexual orientation, **GENDER IDENTITY**, or
23 national origin, that any dwelling is not available for inspection, sale, or rental when
24 the dwelling is available; or

25 (5) for profit, induce or attempt to induce any person to sell or rent
26 any dwelling by representations regarding the entry or prospective entry into the
27 neighborhood of a person of a particular race, color, religion, sex, disability, marital
28 status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin.

29 20-707.

30 (b) (1) A person whose business includes engaging in residential real
31 estate-related transactions may not discriminate against any person in making
32 available a transaction, or in the terms or conditions of a transaction, because of race,
33 color, religion, sex, disability, marital status, familial status, sexual orientation,
34 **GENDER IDENTITY**, or national origin.

35 (2) Paragraph (1) of this subsection does not prohibit a person engaged
36 in the business of furnishing appraisals of real property from taking into consideration

1 factors other than race, color, religion, sex, disability, marital status, familial status,
2 sexual orientation, **GENDER IDENTITY**, or national origin.

3 (c) A person may not, because of race, color, religion, sex, disability, marital
4 status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin:

5 (1) deny a person access to, or membership or participation in, a
6 multiple-listing service, real estate brokers' organization, or other service,
7 organization, or facility relating to the business of selling or renting dwellings; or

8 (2) discriminate against a person in the terms or conditions of
9 membership or participation.

10 20-1103.

11 (b) Whether or not acting under color of law, a person may not, by force or
12 threat of force, willfully injure, intimidate, interfere with, or attempt to injure,
13 intimidate, or interfere with:

14 (1) any person because of race, color, religion, sex, disability, marital
15 status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin and
16 because the person is or has been:

17 (i) selling, purchasing, renting, financing, occupying, or
18 contracting or negotiating for the sale, purchase, rental, financing, or occupation of
19 any dwelling; or

20 (ii) applying for or participating in any service, organization, or
21 facility relating to the business of selling or renting dwellings;

22 (2) any person because the person is or has been, or in order to
23 intimidate the person or any other person or any class of persons from:

24 (i) participating, without discrimination on account of race,
25 color, religion, sex, disability, marital status, familial status, sexual orientation,
26 **GENDER IDENTITY**, or national origin, in any of the activities, services, organizations,
27 or facilities described in item (1) of this subsection; or

28 (ii) affording another person or class of persons the opportunity
29 or protection to participate in any of the activities, services, organizations, or facilities
30 described in item (1) of this subsection; or

31 (3) any person because the person is or has been, or in order to
32 discourage the person or any other person from:

33 (i) lawfully aiding or encouraging other persons to participate,
34 without discrimination on account of race, color, religion, sex, disability, marital

1 status, familial status, sexual orientation, **GENDER IDENTITY**, or national origin, in
2 any of the activities, services, organizations, or facilities described in item (1) of this
3 subsection; or

4 (ii) participating lawfully in speech or peaceful assembly
5 opposing any denial of the opportunity to participate in any of the activities, services,
6 organizations, or facilities described in item (1) of this subsection.

7 **Article – State Personnel and Pensions**

8 2–302.

9 (a) The State recognizes and honors the value and dignity of every person
10 and understands the importance of providing employees and applicants for
11 employment with a fair opportunity to pursue their careers in an environment free of
12 discrimination or harassment prohibited by law.

13 (b) (1) Except as provided in paragraph (2) of this subsection or by other
14 law, all personnel actions concerning a State employee or applicant for employment in
15 State government shall be made without regard to:

16 (i) age;

17 (ii) ancestry;

18 (iii) color;

19 (iv) creed;

20 **(V) GENDER IDENTITY;**

21 ~~[(v)]~~ **(VI)** marital status;

22 ~~[(vi)]~~ **(VII)** mental or physical disability;

23 ~~[(vii)]~~ **(VIII)** national origin;

24 ~~[(viii)]~~ **(IX)** race;

25 ~~[(ix)]~~ **(X)** religious affiliation, belief, or opinion; [or]

26 ~~[(x)]~~ **(XI)** sex; **OR**

27 **(XII) SEXUAL ORIENTATION.**

1 (2) A personnel action may be taken with regard to age, sex, or
2 disability to the extent that age, sex, or physical or mental qualification is required by
3 law or is a bona fide occupational qualification.

4 (c) (1) Each State employee is expected to assume personal responsibility
5 and leadership in ensuring fair employment practices and equal employment
6 opportunity in Maryland State government.

7 (2) Employment discrimination and harassment by State managers,
8 supervisors, or other employees is prohibited.

9 (3) A State employee who violates this subtitle is subject to
10 disciplinary action by the employee's appointing authority, including the termination
11 of State employment.

12 (d) The Equal Employment Opportunity Program in Title 5, Subtitle 2 of this
13 article governs all employees of any unit in the Executive Branch of State government,
14 including a unit with an independent personnel system.

15 (e) (1) At least annually, the Secretary shall report on the Equal
16 Employment Opportunity Program established in § 5-202 of this article to the Joint
17 Committee on Fair Practices and State Personnel Oversight.

18 (2) The head of a personnel system in the Legislative and Judicial
19 branches may report periodically on equal employment opportunity programs and
20 policies in effect in that personnel system to the Joint Committee on Fair Practices
21 and State Personnel Oversight.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.